

1. What is a trademark?

A trademark is an intellectual property right that protects a word, name, symbol, sound, or color used by a business to distinguish its goods and services from others, and may be used as an indicator of their source and/or quality.

2. What is the difference between a service mark and a trademark?

A service mark and a trademark are basically the same thing, except that a service mark is used in connection with services, and a trademark is used in connection with goods. (The general terms "mark" and "trademark" may be used to describe both trademarks and service marks.)

3. Can I reserve a trademark?

Maybe. Federal law permits the filing of an "intent to use" application with the USPTO. However, a federal or state registration will not issue (even for an "intent to use" application) until the trademark is actually used in commerce.

4. How are trademark rights acquired?

Generally, the first person to properly use a mark in commerce is the first person to acquire trademark rights to that mark, but generally those rights accrue only in the geographical area of actual use. Constructive use rights may be acquired through the registration process.

5. Do I need to register my trademark?

No. It is not required that you register your trademark in order to establish ownership rights. However, besides providing constructive notice regarding your claim to ownership of the trademark, federal trademark registration provides the trademark owner with certain remedies and procedural advantages should it become necessary to judicially enforce his/her/its trademark rights. Federal trademark registration may also create a legal presumption of the registrant's ownership of the trademark and the registrant's exclusive right to use the mark in commerce in connection with the goods or services described in the application.

A Texas state trademark registration might serve as evidence of prior use of the trademark within the State of Texas, and provide the trademark owner with certain remedies and procedural advantages should it become necessary to judicially enforce his/her/its trademark rights.

6. Are there any special requirements for obtaining a state trademark registration?

Yes. The requirements for state trademark registration may be found in Chapter 16 of the Texas Business & Commerce Code and in the administrative rules adopted by the Secretary of State. You should consult with an attorney about any further questions you may have.

7. Do you need to be a corporation to obtain a trademark?

No. The trademark applicant is the person who owns the mark. Normally, this is the person who produces the goods or who renders the services associated with the mark and who controls the use of the mark. That person can be an individual or a business entity (e.g., general partnership, corporation, limited liability company).

8. Can I use a state trademark application to register a trade name?

No, unless the trade name is also a trademark or service mark, in which case the trade name must be registered as a trademark or service mark.

9. Can I use the "TM" or "SM" notation without first registering my trademark?

Yes. Federal or state registration is not a prerequisite to using the "TM" or "SM" (trademark or service mark) notation. The "TM" or "SM" notation is a means of informing third parties that the person claims trademark rights to the trademark or service mark associated with "TM" or "SM" notation, respectively.

In contrast, you cannot, use the "®" (trademark or service mark) notation, unless the mark is registered with the USPTO.

10. Do I need to use an attorney to make an application to register a trademark?

No. Although it is not required that you use an attorney to pursue a trademark application, it is often desirable to retain an attorney familiar with trademark matters.

11. How do I find out whether the mark I've chosen is already registered?

Information on active Texas state trademark registrations is available by calling (512) 463-5555 or by faxing your inquiry to (512) 463-5709. You also may e-mail your inquiry to corpinfo@sos.state.tx.us. Information on active federal trademark applications and registrations is available through the USPTO's online database, at <http://www.uspto.gov/main/trademarks.htm>. It is strongly suggested that you search federally registered trademarks and service marks, since a federally registered mark generally preempts a state-issued registration.

12. Does the Texas Secretary of State search federally registered trademarks, or any other databases, when examining a state application?

Probably not. The Texas Secretary of State is only required to examine a state application for compliance with Chapter 15 of the Texas Business & Commerce Code. This includes searching active Texas state trademark applications and registrations, but not necessarily federal trademark applications or registrations, or any of the information or materials. Regardless, the responsibility of performing a more substantial search to avoid infringement situations is placed upon the applicant.

13. Can I expedite the review of a trademark application?

No. The Texas Secretary of State is required by statute to examine applications in the order in which they are filed, including applications concurrently processed for registration of the same or confusingly similar marks.

14. I am not sure which international classification applies to my specific goods or services. Where can I obtain information on the appropriate class?

Information about the classification of goods and services can be found in Rule 93.101 of the Texas Administrative Code and Section 16.09 of the Texas Business & Commerce Code (for state registrations), and Chapter 1400 of the USPTO's Trademark Manual of Examining Procedure (for federal and, to some extent, state registrations). You should consult with an attorney about any further questions you may have.